

1 Timothy P. Walker (State Bar No. 105001)  
timothy.walker@klgates.com  
2 Harold H. Davis, Jr. (State Bar No. 235552)  
harold.davis@klgates.com  
3 **K&L GATES LLP**  
55 Second St., Suite 1700  
4 San Francisco, CA 94105  
Telephone: (415) 882-8200  
5 Facsimile: (415) 882-8220

6 Attorneys for Plaintiffs ACER, INC., ACER  
AMERICA CORPORATION and  
7 GATEWAY, INC.

8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 ACER, INC., ACER AMERICA  
CORPORATION and GATEWAY, INC.,

13 Plaintiffs,

14 v.

15 TECHNOLOGY PROPERTIES LIMITED,  
PATRIOT SCIENTIFIC CORPORATION, and  
16 ALLIACENSE LIMITED,

17 Defendants.

Case No. 5:08-cv-00877 JF

**DECLARATION OF MICHAEL  
FLANNERY IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO  
DISMISS**

18 I, Michael Flannery declare:

19 1. I am employed by Gateway, Inc. ("Gateway"). My job title is Senior Director,  
20 Engineering. I have personal knowledge of the facts set forth below and, if called as a witness, I  
21 could and would testify competently to them.

22 2. I have been employed by Gateway since February 24, 1992. My job duties  
23 generally include managing an engineering team that is responsible for providing support to (1)  
24 Gateway's Legal Department on technical matters related to patents, (2) Gateway's development  
25 teams in the area of usability, and (3) Gateway's development and public relations teams in the  
26 area of product benchmark testing.

27 3. Gateway is headquartered in Irvine, California. Gateway is one of the largest and  
28 most well known U.S. computer hardware companies. Gateway develops, supports, and markets

1 a wide range of personal computers, computer monitors, and computer accessories. In addition to  
2 having its headquarters in Irvine, Gateway transacts a significant amount of business within the  
3 State of California.

4 4. As part of my duties for Gateway, I am familiar with the discussions between  
5 Gateway and the Defendants. All discussions between Gateway and the Defendants took place in  
6 California.

7 5. Beginning in 2004, Defendant Patriot Scientific Corporation, purportedly acting on  
8 behalf of the other Defendants, repeatedly demanded that Plaintiffs enter into a royalty-bearing  
9 license with respect to United States Patent Numbers 5,809,336; 5,784,584; and 5,440,749  
10 (collectively "patents-in-suit") or face a lawsuit.

11 6. Plaintiffs met in San Jose, California and Irvine, California with Defendants on  
12 numerous occasions between early 2006 and February 2008 to discuss a possible license. During  
13 these meeting, Defendants repeatedly threatened Plaintiffs with a patent infringement action if  
14 they did not enter into a royalty-bearing license with respect to the patents-in-suit.

15 7. On February 8, 2008, Plaintiffs filed the current declaratory judgment action with  
16 this Court. A little more than two months later, Technology Properties Limited, Inc. and Patriot  
17 Scientific Corporation retaliated by filing a subsequent suit in the Eastern District of Texas.

18 8. With the understanding that the Northern District of California was the most  
19 appropriate forum to adjudicate the current Declaratory Judgment Action, Gateway retained  
20 counsel based in the San Francisco Bay Area to file its Complaint.

21 9. Nearly all of Gateway's documents relating to the negotiations between Gateway  
22 and Defendants are located in California. These documents are stored at Gateway's headquarters  
23 in Irvine, California.

24 10. Nearly all Gateway employees who participated in the negotiations between  
25 Gateway and Defendants are resident to Gateway's headquarters in Irvine, California.

26 11. Gateway's sales of goods and services to California customers have averaged  
27 approximately \$34,794,348 per month for the past seventeen months. A significant portion of  
28 those sales are to customers located in northern California. Sales of the accused product are

1 included in these totals.

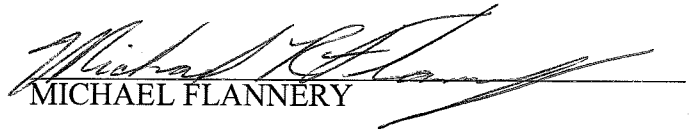
2 12. Gateway has multiple leases for real property throughout California, including one  
3 in the City of Pleasanton.

4 13. Gateway receives, stores, and ships its inventory from third-party warehouses  
5 located in California.

6 14. Gateway has approximately 193 employees located in California.  
7

8 I declare under penalty of perjury under the laws of the United States that the foregoing is  
9 true and correct.

10 Executed this 11th day of July, 2008, in North Sioux City, South Dakota.

11  
12   
13 MICHAEL FLANNERY  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28